In the High Court of Uttaranchal At Nainital

Criminal Misc. Application No. 12/2006

1- Sushil Pundera S/o Ram Prasa Pundera,
R/o Village Padli, Patti Bangansyun,
District Pauri Garhwal.

2- Rukam Chand Ramola
S/o Ram Chandra Ramola,
R/o Rawatgaon, Patti Ronad,
Tehsil Pratapnagar,
District Tehri Garhwal.

3- Dinesh Rangar S/o Anand Singh Rangar,
R/o Village Ranima, Patti Bhadura
Tehsil Pratapnagar,
District Tehri Garhwal

Vs

State of Uttaranchal .....Respondent.

Sri R.P. Nautiyal, learned counsel for the applicants.
Sri Sudhir Chaudhary, learned A.G.A. for the State.

Hon'ble B.C. Kandpal, J.

This transfer petition U/S 407 Cr. P.C. has been filed by the petitioners who are facing the trial U/S 307 I.P.C. in criminal case No. 1323/2000, State Versus Sushil Pundera and others, pending in the court of C.J.M. Tehri Garhwal. The petitioners by way of this application have sought the transfer of the case from Tehri to the court of Special Judge, Gangster Act, Dehradun.

2- Heard learned counsel for the applicants, learned A.G.A. and perused the record.

3- At this stage I do not find any sufficient ground to transfer the case U/S 307 I.P.C. from Tehri to the Court of Special Judge, Gangster Act Dehradun. The Special Judge, Gangster Act is not supposed to look

into the merit of case U/S 307 I.P.C. The Special Judge has to look into the matter as to whether the petitioners come within the ambit of the gangster or not and for that purpose the petitioners are to be tried by the Special Judge, Gangster Act. In a case U/S 307 I.P.C. the matter is entirely different where the concerned court has to see the merit of that individual case U/S 307 I.P.C. Therefore, I do not find sufficient ground to transfer the criminal case No. 1323/2000 State Vs. Sushil Pundera and others U/S 307 I.P.C. pending in the Court of C.J.M. Tehri Garhwal to the Court of Special Judge, Gangster Act, Dehradun.

4- The transfer application is liable to be rejected.

5- The learned counsel for the petitioners has invited my attention towards paragraph-4 of the affidavit wherein it has been stated that the "BAIL APPLICATION" of petitioner Rukam Chand Ramola and Dinesh Rangar was moved before the Court of Addl. Sessions Judge, Dehradun and the same was allowed vide order dated 30-10-1999 contained in Annexure No.1 to the affidavit. The learned counsel for the petitioners has thus prayed that the petitioner Nos. 2 and 3 have once been granted bail by the court of Addl. Sessions Judge, therefore, they may not be asked to furnish the bail bonds in this case before the concerned court at Tehri Garhwal. It has not been mentioned anywhere in the affidavit that petitioner No.1 Sushil Pundera has ever been granted bail in the case U/S 307 I.P.C. from any court concerned.

6- Accordingly, I direct that in case if the petitioner Nos. 2 and 3 have been granted bail by the Court of Addl. Sessions Judge, Dehradun vide order dated 30-10-1999, which is contained in Annexure No. 1 to the affidavit, then they need not file any fresh bail bonds before the court concerned at Tehri Garhwal. However, in case if the bail application on behalf of petitioner No.1 Sushil Pundera is moved before the court concerned at Tehri, the same should be decided expeditiously.

7- With the aforesaid observation, the criminal miscellaneous transfer application is dismissed.

(B.C. Kandpal, J.)

Dated: 28.07.2006
ISB